S.B.Civil Writ Petition NO.787/2003

M/s. Jani Khushal Ji Bhagwat Kumar vs. State of Rajasthan & ors.

DATE OF ORDER : - 19.4.2005

HON'BLE MR. PRAKASH TATIA,J.

Mr. JP Joshi, for the petitioner.

Mr. OP Rathi, Dy. GA, for the respondents.

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Heard learned counsel for the parties.

The facts in brief are that the petitioner offered his building to the respondents on rent by sending a letter dated 4.8.1993 (Annex.1). That offer followed by another communication dated 12.8.1993 (Annex.3) containing certain conditions for lease. The respondents accepted the offer of the petitioner by letter dated 18.8.1993 (Annex.4). The petitioner's case is that after completion of 5 years, rent of premises was required to be re-assessed in view of the conditions as available in General Financial and Accounts Rules (for short 'GFA Rules') which are statutory Rules. The petitioner, therefore, submitted request for re-assessment of rent vide letter dated 5.8.1998 (Annex.10). Upon this, the case for re-assessment of rent was processed by the department and ultimately, after several correspondence, the competent authority assessed the rent of the premises to be Rs.20,845/-

per month from January, 1999 to October, 1999.

It will be worthwhile to mention here that the premises in question were taken on rent by the respondent department on monthly tentative rent of Rs.4,000/- which was to be increased with assessment to be made by Public Works Department (PWD). The rent was increased on the basis of the said assessment by PWD to Rs.7,226/- from 15.9.1993, therefore, the petitioner's claim is that he is entitled to have the rent increased from Rs.7,226/- to Rs.20,845/- on expiry of five years period of lease.

Learned counsel for petitioner submitted that the GFA Rules are statutory one and in view of the judgment delivered in the case of *Manmatha Nath Kayal vs. District Manager, 24 Parganas, Food Corporation of India and others* reported in *AIR 1996 Calcutta 316,* a writ can be issued against the respondents to pay the rent as assessed by their own whims which is permissible under the GFA Rules framed by the State itself.

Learned counsel for the petitioner also submitted that the petitioner served a notice under Section 80 CPC upon the respondents and the respondents in reply to the said notice, admitted all the facts

and case of the petitioner but denied to increase the rent without assigning any reason.

Learned counsel for the respondents submitted that the petitioner offered his premises which was taken on rent. The petitioner offered his premises with conditions as mentioned in Annex.3 and either in Annex.1 or in Annex.3, there is no condition that the rent of the premises will be increased after expiry of five years. It is also submitted that despite the fact that there is no condition for increase on rent after expiry of five years still the respondents agreed to pay 20% increased rent.

I have considered the rival submissions and perused the facts of the case.

The facts mentioned above clearly reveal that this is a case on seeking enforcement of an agreement for increase of rent only. The ground of increase is re-assessment of rent by PWD, a department of the State Government itself and in view of GFA Rules.

In this case, the rent is to be reassessed and determined is a question which requires determination as the report which was prepared

by PWD has not been accepted by the respondent department and the grounds for not accepting such report is not available on record but the respondents offered the rent by increasing 20%. Therefore, whether the petitioner has any contractual right to get the rent increased can be determined only in proper proceedings in civil suit and whether the petitioner can claim increase of rent despite the fact that the rent is agreed one and the conditions on which the premise was let out contained no condition to increase rent periodically.

It is true that there is a provision which provides that the Government may increase the rent after expiry of five years of lease and for that purpose, they may take report of PWD but whether there cannot be a contract contrary for taking on lease the premises is also required to be examined before declaring the petitioner entitled for any rent.

The judgment relied upon by learned counsel for the petitioner in the case of Manmatha Nath (supra) was one of the exceptional case where the premises were taken on rent by FCI and after taking on rent, they did not pay any amount of rent to the landlord who pleaded in his petition that the rent from let out godowns is the only source of income of the landlord and his family members and those facts were taken into

consideration and, therefore, Calcutta High Court held that it is deprivation of livelihood in utter violation of Article 21 of the constitution. Situation in this case cannot be equated with the Manmatha Nath's case (supra) because of the simple reason that the petitioner was getting agreed rent but seeking enhancement of rent only on the basis of certain clauses available in the GFA Rules and further, it is relevant that the respondents have vacated the premises and delivered the possession to the petitioner.

In view of the above discussion, this writ petition, having no merit, is hereby dismissed.

(Prakash Tatia), J.

s.phophaliya/-